

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | File No.: EB-02-HL-073 |
| |) | NAL/Acct. No. 200332860001 |
| Trade Center Management, Inc. |) | FRN 0006-3516-88 |
| Licensee, Station KHRA(AM) |) | |
| Honolulu, Hawaii |) | |

MEMORANDUM OPINION AND ORDER

Adopted: June 21, 2005

Released: June 23, 2005

By the Acting Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we deny the petition for reconsideration filed by Trade Center Management, Inc. (“Trade Center”), licensee of Station KHRA(AM) Honolulu, Hawaii. Trade Center seeks reconsideration of the *Forfeiture Order*¹ in which the Chief, Enforcement Bureau (“Bureau”), found it liable for a monetary forfeiture in the amount of \$8,000 for willful and repeated violation of Section 73.3526(b) of the Commission’s Rules (“Rules”).² The noted violation involves Trade Center’s failure to maintain Station KHRA’s public inspection file at the station’s main studio.

II. BACKGROUND

2. On August 2, 2002, Commission agents from the Commission’s Honolulu, Hawaii Resident Agent Office inspected Station KHRA and its main studio. The agents found that there was no public inspection file maintained at the main studio. KHRA’s General Manager stated that there was no public inspection file maintained at the main studio. On October 31, 2002, the Honolulu Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Trade Center for willful and repeated violation of Section 73.3526(b) of the Rules. Trade Center responded to the NAL on November 27, 2002. On April 7, 2004, the Enforcement Bureau issued a *Forfeiture Order* in which it upheld the NAL but reduced the forfeiture amount from \$10,000 to \$8,000 based on Trade Center’s history of overall compliance with the Commission’s rules.

3. On May 6, 2004, Trade Center filed a petition for reconsideration (“petition”) of the *Forfeiture Order*. In its petition, Trade Center argues that it did not violate the public inspection file rule because most of the documents required to be maintained for public inspection were available at KHRA’s main studio when the inspection was conducted. Trade Center also argues that the record does not support the Commission’s finding that Trade Center’s violation of the public file rule was willful or repeated.

III. DISCUSSION

4. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934 as amended (“Act”),³ Section 1.80 of the Rules,⁴ and *The Commission’s*

¹ 19 FCC Rcd 6287 (Enf. Bur. 2004).

² 47 C.F.R. § 73.3526(b).

³ 47 U.S.C. § 503(b).

*Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines.*⁵ In examining Trade Center’s petition, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and any other such matters as justice may require.⁶

5. In its petition, Trade Center reiterates that KHRA’s General Manager, Mr. Ki-Yeoun Kim, declared in response to the *NAL* that most of the documents to be kept in a public inspection file were in a cabinet at the main studio at the time of the inspection.⁷ Therefore, Trade Center argues, the Bureau’s finding that the public inspection file was not available was inaccurate. Although we note that Mr. Kim did make this statement in his declaration, we also note that in the same declaration, Mr. Kim stated:

“After receiving the *NAL* in early November, I have consulted with communications counsel, who has explained the FCC’s public inspection file requirements to me. Based upon that advice, *I have created* a public inspection file which is now available for inspection by the public Mondays through Fridays during regular business hours.”⁸ (emphasis added)

Thus, by Mr. Kim’s own admission, he did not create the public inspection file until after the issuance of the *NAL* more than three months after the inspection. We therefore find no reason to alter our finding that Trade Center failed to maintain a public inspection file for Station KHRA at the station’s main studio.

6. Trade Center next argues that the record does not support the Bureau’s finding that Trade Center’s conduct was willful or repeated, taking issue with the *Order*’s statement that “[e]ven if most of the documents required to be kept in the public inspection file were in a cabinet at the main studio, this fact would not be the basis for a “good faith” reduction of the forfeiture because Trade Center did not make those documents available to the FCC Agent when he requested the public file.” Trade Center asserts that this statement implies that Mr. Kim consciously withheld the public file from the agents. We do not believe the statement makes any implication about Mr. Kim’s intentions. Moreover, Mr. Kim’s intentions are irrelevant to the issue of whether Trade Center’s violation of Section 73.3526(b) of the Rules was willful. The term “willful,” as used in Section 503(b) of the Act, does not require a finding that the rule violation was intentional or that the violator was aware that it was committing a rule violation.⁹ Rather, the term “willful” simply requires that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission’s rules.¹⁰ As stated in the *Order*, Trade Center made a conscious decision to have a technical file available at KHRA’s transmitter site but not at its main studio. Because of this decision, and the fact that there was no public inspection file at the main studio, Trade Center’s violation of Section 73.3526(b) was willful. Nothing in Trade Center’s petition

⁴ 47 C.F.R. § 1.80.

⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ See petition at page 2. See also response to *NAL*, Declaration of Ki-Yeoun Kim, paragraph 2.

⁸ See Declaration of Ki-Yeoun Kim at paragraph 3.

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ *Id.*

leads us to any other conclusion. Further, Trade Center attributes its not producing the public inspection file to a mutual mistake in assumptions between the investigating agent and Mr. Kim. Assuming that Mr. Kim, because of his lack of proficiency in English, did not understand that the agent was requesting the public inspection file, the fact remains that there was no public inspection file at the main studio for Mr. Kim to produce.

7. Finally, although Trade Center asserts that the record does not justify the *Order's* finding that Trade Center repeatedly¹¹ violated the public inspection file rule, we can reach no other conclusion given Trade Center's admission that it did not create the public inspection file until after it received the *NAL*.

8. Based on the foregoing, which establishes that Trade Center's violation of the public inspection file rule was both willful and repeated, we conclude that the \$8,000 forfeiture should be sustained.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act¹² and Section 1.106 of the Rules,¹³ Trade Center Management, Inc.'s petition for reconsideration of the April 7, 2004 *Forfeiture Order* **IS DENIED**.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁴ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payments by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

11. **IT IS FURTHER ORDERED THAT** this *Order* shall be sent by regular mail and by certified mail, return receipt requested, to Henry A. Solomon, Esq., Garvey Schubert Barer, 1000 Potomac Street, NW, Washington, DC 20007-3501.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief, Enforcement Bureau

¹¹ Section 312(f)(2) defines the term repeated as the commission or omission of any act more than once or if such commission or omission is continuous, for more than one day. 47 U.S.C. § 312(f)(2).

¹² 47 U.S.C. § 405.

¹³ 47 C.F.R. § 1.106.

¹⁴ 47 U.S.C. § 504(a).